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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-94
SCRIPPS HOWARD)	
BROADCASTING COMPANY)	File No. BRCT-910603KX
)	
For Renewal of License of)	
Station WMAR-TV,)	
Baltimore, Maryland)	
)	
and)	
)	
FOUR JACKS BROADCASTING, INC.)	File No. BPCT-910903KE
)	
For Construction Permit for a)	
New Television Facility on)	
Channel 2 at Baltimore,)	
Maryland)	

To: The Honorable Richard L. Sippel
Administrative Law Judge

OPPOSITION TO MOTION TO STRIKE

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys and pursuant to the Presiding Judge's Order, FCC 93M-648 (released October 8, 1993), hereby opposes the Motion to Strike ("Motion") filed by Scripps Howard Broadcasting Company ("Scripps Howard") on October 25, 1993. Scripps Howard seeks to strike testimony in Four Jacks Exhibits 2, 3, and 4 that sets forth, under the broadcast experience criterion, the Baltimore community-related activities of Four Jacks' principals through their operation of WBFF(TV), the Baltimore station which they currently own and operate. Since Four Jacks does not seek to claim "civic participation" enhancement credit for the activities set forth in the questioned testimony, and since Commission

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precedent supports this evidence as bearing on the quality of the broadcast experience of Four Jacks' principals, Scripps Howard's Motion is groundless and should be denied.

1. Scripps Howard's Motion is for the most part based on the erroneous notion that the Four Jacks testimony it seeks to strike is a "transparent attempt to seek civic participation credit in spite of Four Jacks' failure to make timely claims for such credit." Four Jacks has never claimed -- and does not now claim -- "civic participation" enhancement credit. Therefore, Scripps Howard's claim that the questioned testimony is a "backdoor" attempt to claim such credit, and is thus an impermissible post-"B" cutoff upgrade, is baseless.

2. At the same time, however, Commission precedent establishes that community-related broadcast activities, while not rising to the level of involvement warranting civic participation credit, nonetheless are relevant under the broadcast experience criterion. For example, in Broadcast Associates of Colorado, 59 R.R.2d 741 (Rev. Bd. 1985), modified on other grounds, 104 F.C.C.2d 16 (1986), an applicant principal's work in reporting local events for radio stations in the proposed community of license was not credited under civic participation, but was considered under broadcast experience. Id. at 743. More recently, in Linda U. Kulisky, 8 FCC Rcd 6235 (Rev. Bd. 1993), an applicant received broadcast experience credit (but not civic participation credit) for performing various volunteer activities for two public television stations.

3. Moreover, the Commission has consistently found past broadcast experience occurring in the applicant's proposed community of license as bearing on the weight of the broadcast experience credit awarded. See, e.g., Great Lakes Broadcasting, Inc., 8 FCC Rcd 4007, 4009 (1993) (applicant given broadcast experience preference for "twenty years broadcast experience at stations in the service area"); Richardson Broadcasting Group, 5 FCC Rcd 6964 n.2 (Rev. Bd. 1990) (applicant credited for "history of broadcasting in [her proposed community of license] spanning a period of four decades"). The Four Jacks testimony at issue establishes that Four Jacks' principals not only have broadcast experience, but have community-responsive broadcast experience in Baltimore, Maryland, the community for which Four Jacks seeks to operate a television station on Channel 2. To preclude Four Jacks from offering such testimony, as Scripps Howard requests, would wrongly deprive the record of evidence clearly material to the quality of Four Jacks' principals' broadcast experience. Striking that testimony would also be unfair in the extreme given that Scripps Howard itself has been permitted to introduce literally pages of testimony as to the involvement in community activities of WMAR-TV (and even employees of WMAR-TV that are not principals of Scripps Howard). See Scripps Howard Ex. 3A at 53-61.

4. Scripps Howard complains that it would be unfairly prejudiced by permitting the testimony at issue. Scripps Howard offers three reasons for this claim, none of which have any merit. First, as noted above, the testimony does not result in a

late comparative upgrade of Four Jacks' application, as Four Jacks has never claimed and does not now claim credit for civic participation. Scripps Howard's second argument -- that "[a]t this late stage, Scripps Howard cannot effectively gather evidence" to rebut the testimony at issue -- is amazingly disingenuous, for Scripps Howard already has had more than enough opportunity to gather such evidence. Not only did Four Jacks produce documents in discovery relating to the participation of WBFF(TV) in Baltimore community events, but Scripps Howard in fact deposed Four Jacks' integrated principals in detail as to the facts contained in the testimony it now seeks to strike. See Exhibit A hereto (excerpts from deposition testimony of Four Jacks principals). Finally, Scripps Howard's assertion that admission of the testimony would somehow improperly influence the Presiding Judge's judgment is purely speculative, and demeans the Judge's ability to distinguish between the various comparative criteria.

Conclusion

Scripps Howard's motion to strike is baseless. Contrary to Scripps Howard's claims, Four Jacks is not seeking to claim credit for civic participation through the testimony in question. However, the facts in that testimony -- on which Scripps Howard has already deposed Four Jacks' principals -- are material and relevant to Four Jacks' broadcast experience. Striking the testimony would be erroneous as a matter of law and patently unfair to Four Jacks, in light of the abundant testimony that the


Judge has permitted as to WMAR-TV's involvement in the community of Baltimore. For the reasons set forth herein, Scripps Howard's Motion should be denied.

Respectfully submitted,

FOUR JACKS BROADCASTING, INC.

FISHER, WAYLAND, COOPER
AND LEADER
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

By:


Martin R. Leader
Kathryn R. Schmeltzer
Gregory L. Masters

Its Attorneys

Dated: November 4, 1993

EXHIBIT A

COPY

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

-- -- -- -- --X

In re Applications of

SCRIPPS HOWARD BROADCASTING
COMPANY

For Renewal of License of
Station WMAR-TV,
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For a Construction Permit
for a New Television Facility
on Channel 2 at Baltimore,
Maryland

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: MM Docket # 93-94

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: File # BRCT-910603KX

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: File # BPCT-910903KE

Deposition of

FREDERICK G. SMITH

called for examination on Tuesday, July 27, 1993,
held at the law offices of Baker & Hostetler, 1050
Connecticut Avenue, N.W., Washington, D.C.,
beginning at 9:45 a.m., before Lynell C.S. Abbott, a
Notary Public, RPR/CM.

FRIEDLI, WOLFF & PASTORE, INC.
1735 Eye Street, N.W., Suite 920
Washington, D. C. 20006
(202) 331-1981

1 it and --

2 MR. GREENEBAUM: I'll save the questions.

3 BY MR. GREENEBAUM:

4 Q. Are you involved in community affairs at
5 all?

6 A. Through the station primarily.

7 Q. What is it that you do in that regard?

8 A. My most important interest other than news
9 would be Champions of Courage.

10 Q. I'm sorry?

11 A. Champions of Courage and MESA, M-E-S-A.
12 That's Maryland Engineering and Science Association.

13 Q. Does anyone help you with MESA?

14 A. Oh, yeah. This is primarily a project of
15 the station's under the direction of Sharon Wylie.
16 But for the last couple of years I've been involved
17 in presenting awards or going to the awards meetings
18 as a representative of the station at the awards.

19 Q. Is the award you present the Julian Smith
20 Memorial Scholarship?

21 A. Yes, I have in the past presented that
22 award.

1 Q. When did you last present that award?

2 A. Two years ago.

3 Q. What year was that?

4 A. This is '93. '92.

5 Q. What is Champions of Courage?

6 A. Champions of Courage is something that's
7 very dear to my heart. It's a program that we
8 started to encourage kids in inner city schools to
9 write an essay about the person who they believe
10 that's presented the best role model or the person
11 who represents the individual they look up to in the
12 theme of Martin Luther King. And what we do is the
13 kids write an essay and for the essay final we get
14 them on TV, have a little thing that they read
15 about, a little excerpt from their theme. And then
16 we have for all the kids that are involved and all
17 the parents and all the school teachers and the
18 politicians in Baltimore show up -- it's such a
19 widely respected forum. And these kids are presented
20 with an award as well as the person who they name as
21 their Champion of Courage, sometimes either their
22 mother or maybe a famous person or whomever. That's

1 the gist of that.

2 Q. Who won the MESA award this year?

3 MR. LEADER: Are you testing his memory?

4 THE WITNESS: I can't tell you the names of
5 the kids. I think one person is going to Howard and
6 the other may be going to the University of
7 Maryland.

8 BY MR. GREENEBAUM:

9 Q. Do you recall the name of any winner of
10 that award?

11 A. One of the person's names I think was Eto.

12 Q. What year was that?

13 A. This year.

14 Q. How many winners were there?

15 A. Two a year. Two a year -- let me qualify
16 that -- for the Julian Smith scholarship. There are
17 other winners in other categories.

18 Q. How about the Champions of Courage, do you
19 recall any of the people --

20 A. I couldn't tell you the names of any
21 winners.

22 Q. What is it that you yourself did in

1 connection with Champions of Courage?

2 A. Attended the meetings, talked to
3 dignitaries, the Mayor of Baltimore; Kweisi Mfume,
4 United States Congressperson, met on behalf of the
5 station; Ben Cardin, United States Congressperson;
6 the former assistant commandant of the United States
7 Naval Academy, people like that, dignitaries that
8 come and I represent the station along with Ms.
9 Wylie.

10 Q. How much time do you spend in that
11 activity?

12 A. Five, six hours.

13 Q. Is all of that during working hours at the
14 station?

15 A. Usually it's after hours.

16 Q. Have you received any correspondence or
17 have you written any of the people with whom you
18 have met for this purpose in connection with that --

19 A. I have received correspondence, yes, and
20 Sharon Wylie has received correspondence.

21 Q. With what degree of regularity have you --

22 A. Every year that we've had this kind of

1 endeavor we've received correspondence from
2 individuals who are involved with Champions of
3 Courage as well as individuals involved with MESA, I
4 personally as well as the company as well as Sharon
5 Wylie.

6 Q. Did you receive such correspondence in
7 1993?

8 A. I'm sure I did. But I don't recall
9 specifically from who.

10 Q. Do you recall when?

11 A. I don't remember specifically the date.

12 Q. But you received some.

13 A. Yes, sir.

14 Q. How about in 1992?

15 A. Sure.

16 Q. How about 1991?

17 A. '91, I think was the year we started the
18 MESA. That's the year of the discussion of MESA. Are
19 you talking about MESA or Champions of Courage now?

20 Q. I'm talking about either or both.

21 A. Every year we get correspondence.

22 Q. On both of them.

1 A. Yes, sir.

2 Q. And you've seen that correspondence.

3 A. Yes, I have.

4 Q. Where is that correspondence maintained?

5 A. Primarily in our public file.

6 Q. Are you involved in any other civic,
7 community or charitable activities in the Baltimore
8 area at the present time?

9 A. Only through the station.

10 Q. What are they?

11 A. We are involved in American Cancer
12 Society, American Leukemia Society, we have a Kids
13 Don't Drive or Drive Prom Night drive, we have
14 American Parkinson Society, Multiple Sclerosis,
15 Children's Hospital, Johns Hopkins Hospital, Ronald
16 McDonald House, things like that.

17 Q. What role, if any, do you play in any of
18 those activities?

19 A. Nothing specific other than reviewing
20 input. Perhaps Ms. Wylie might ask me what I think
21 about this particular endeavor or something like
22 that.

1 Q. Are those really activities that she's
2 responsible for?

3 A. Yes, sir, primarily.

4 Q. Would she have files or records that would
5 keep track of what she did in that respect on behalf
6 of the station?

7 A. Yes, sir, certainly should so far as
8 letters and things like that in the file. Either
9 that or it's in the public file.

10 Q. Aside from correspondence or
11 acknowledgments have you or your family received any
12 publicity for your work in either radio or TV or
13 charitable organization?

14 A. Yes.

15 Q. When was that and what have you received?

16 A. I can't give you an exact date, but there
17 was a fairly significant article in the Baltimore
18 Sun paper about our family and about the family
19 business and about how we started, primarily about
20 my father.

21 Q. When was that?

22 A. It's in the last couple of years. There's

1 also been an article in the Baltimore magazine, I
2 think there was one article several years ago,
3 primarily, once again, about my dad.

4 Q. Do you belong to any clubs of any kind?

5 A. I'm a member of the Hunt Valley Golf Club.
6 I'm also a member of the Green Spring Racket Club.

7 Q. Anything else?

8 A. No, sir, not that I can think of.

9 Q. I won't delve into this in depth because I
10 know it is in your application, but what is your
11 anticipated role if Four Jacks is successful?

12 A. If Four Jacks is successful my anticipated
13 role will be helping my brothers run the station at
14 large and primarily my delegated duty would be
15 operations manager.

16 Q. And what is it that you understand the
17 operation manager would do?

18 A. Be involved in managing the news
19 operation, production operation, engineering
20 primarily and coordinating the traffic department.

21 Q. In your application, and I am reading from
22 -- I'll show it to you if you want it -- from

CERTIFICATE OF NOTARY PUBLIC

I, Lynell C.S. Abbott, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken by me in machine shorthand and thereafter reduced to writing by means of computer-aided transcription; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Notary Public in and for
the District of Columbia

My commission expires:
March 31, 1997

COPY

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

-- -- -- -- --X
:
In re Applications of :
: MM Docket # 93-94
SCRIPPS HOWARD BROADCASTING :
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and :
FOUR JACKS BROADCASTING, INC. : File # BPCT-910903KE
:
For a Construction Permit :
for a New Television Facility :
on Channel 2 at Baltimore, :
Maryland :
-- -- -- -- --X

Deposition of

ROBERT EDWARD CUNNINGHAM SMITH
called for examination on Wednesday, July 28, 1993,
held at the law offices of Baker & Hostetler, 1050
Connecticut Avenue, N.W., Washington, D.C.,
beginning at 9:40, before Lynell C.S. Abbott, a
Notary Public, RPR/CM.

FRIEDLI, WOLFF & PASTORE, INC.
1735 Eye Street, N.W., Suite 920
Washington, D. C. 20006
(202)331-1981

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THE CORBY GROUP 1-800-255-5040

1 A. No.

2 Q. Do you have any participation in
3 charitable, civic or organizations of that type that
4 you have spent time with even though you may not be
5 a member?

6 A. Well, we have all the stuff at the station
7 that we are into such as MESA and, like I said, the
8 cystic fibrosis, even though I wasn't on the board I
9 did involve the station very in-depthly in that.

10 Q. In what way did you participate?

11 A. I participated by becoming the liaison
12 from the person who wanted me to do it who was one
13 of my tennis instructors who's also an honorary
14 board member.

15 Q. Who is that?

16 A. Steve Krulavitz. He asked me to do it and
17 I discussed it with him and tried to figure out what
18 they were going to do. And it seemed to me that
19 instead of them having me it would be more
20 advantageous for the foundation to have a face, if
21 you will, and that face was our co-anchor on the
22 news, Lisa Willis. So I discussed it with Lisa and

1 she agreed to be their spokesperson and launch their
2 walk, mini walk-a-thon for cystic fibrosis. And I
3 coordinated Steve and Lisa and they cut public
4 service announcements. And the rest is history.

5 Q. When did that conversation take place that
6 started that --

7 A. It started on the tennis court and it
8 ended I guess in May was when the walk-a-thon was.

9 Q. I was sort of looking for a time frame.

10 A. When did Steve first approach me?

11 Q. Yes.

12 A. That was during the winter, indoor season.
13 That was probably November or December of last year.

14 Q. '92?

15 A. Hmm-hmm.

16 Q. What has been your involvement with MESA?

17 A. MESA, Fred, when he, I think it was when
18 he first started working at the station, wanted to
19 do something in my father's name because my father
20 was an engineer and through Hopkins -- and they put
21 the program together.

22 Q. I'm only asking what your involvement was.

CERTIFICATE OF NOTARY PUBLIC

I, Lynell C.S. Abbott, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken by me in machine shorthand and thereafter reduced to writing by means of computer-aided transcription; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Notary Public in and for
the District of Columbia

My commission expires:
March 31, 1997

CERTIFICATE OF SERVICE

I, Sybil R. Briggs, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "OPPOSITION TO MOTION TO STRIKE" were sent by hand delivery this 4th day of November, 1993, to the following:

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
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Washington, D.C. 20554

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